IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3730 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

GOVINDBHAI CHANDULAL SHAH

Appearance:

MR KN RAVAL for Petitioner

(MR HK RATHOD) for Respondent No. 1

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 19/04/2001

ORAL JUDGEMENT

The petitioner-Corporation has challenged the award of Labour Court, Nadiad made on 11/12/1986 in Reference (L.C.N.) No. 971 of 1983.

2. The respondent-workman was employed as a Bus

Conductor with the petitioner-Corporation for almost about 10 years in Dakore Depot of the Nadiad Division.

3. On 15/11/1981 the respondent-workman was on duty on the Dakore-Arnej route. During surprise checking it was found that respondent-workman had recovered fare of Rs.6/- while tickets of denomination of Rs.4/- only were issued; similarly from other passengers a sum of Rs.7.50 had been recovered while tickets only of Rs.6.20 had been issued. The checking party reported the incident to the Competent Authority and on receipt of such report departmental inquiry was initiated against the respondent-workman. The respondent was found guilty at the end of the departmental inquiry and his services were terminated. The respondent-workman raised an industrial dispute and in absence of any settlement between the parties the matter was referred to the Labour Court by way of Reference (L.C.N.) No.971 of 1983.

4. The Labour Court after taking into consideration the facts, evidence on record and submissions of both the sides came to the conclusion that it was not proved that the deliquent-workman was guilty of the charge of misappropriation. The reference was accordingly allowed and the order dated 08/07/1982 made by the petitioner-Corporation dismissing the workman from service was set aside. The petitioner-Corporation was ordered to reinstate the workman in service alongwith continuity of service with 50% of backwages and also other increments and allowances.

The aforesaid order is under challenge in the petition.

5. Mr. Rawal, learned advocate appearing on behalf of the petitioner-Corporation has principally based his case on the following facts :

(i) One passenger who was travelling from Anand to Tarapur was issued one full ticket and two half tickets for which a sum of Rs.6/- was collected from the passengers while only tickets of denomination of Rs.4/- had been issued.

(ii) A sum of Rs.7.50/- was recovered from another group of passengers wherein two and half tickets were issued of denomination of Rs.6.20/- paise only.

(iii) That the statement of the passenger had also been recorded by the checking party.

(iv) That the past record of the deliquent-workman showed that there were about 20 incidents when the workman had indulged in similar activities for which he had been awarded punishment of varying degrees including levying of fine.

6. It was, therefore, submitted that the order of the Labour Court was erroneous and was required to be quashed and set aside. For this purpose reliance was placed on the following decisions :

(i) Karnataka State Road Transport Corporation V/s B.S.Hullikatti, reported in AIR 2001 SC 930

(ii) State of Haryana V/s. Rattan Singh, reported in AIR 1997 SC 1512.

(iii) Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Ltd.) V/s. The Secretary, Sahakari Noukarara Sangha, reported in 2000(6) Supreme 339.

(iv) Gujarat State Road Transport Corporation V/s. Kachraji Motiji Parmar, reported in 1993 Vol. 34 (1) GLR 302.

(v) Gujarat State Road Transport Corporation V/s Jamnadas Becharbhai, reported in 1982 (2) GLH 1057.

7. As against this, on behalf of the respondent-workman, Mr.Rathod submitted that the passengers had not been cross-examined during the course of departmental inquiry; that there was no discrepancy in the way bill and that it was not established that there was any excess cash found with the respondent-workman because there is nothing on record to show that a cash tally was made by the checking party.

8. On behalf of the deliquent-workman Mr.Rathod relied upon the following decisions and submitted that as the respondent-workman had already been reinstated and was in employment, he should not be disturbed after such a length of time :

(i) U.P. State Road Transport Corporation V/s. Mahesh Kumar Mishra, reported in AIR 2000 SC 1151.

(ii) Gujarat State Road Transport Corporation V/s. U.A.Malek, reported in 2001-I-LLJ SC 180.

9. In view of the facts as are available on record, we find that the impugned award made by the Labour Court cannot be upheld.

10. In the case of Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Ltd.) V/s. The Secretary, Sahakari Noukarara Sangha (supra), the Apex Court has stated that :

> "Once act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service. Law on this point is well settled."

In the said case also the facts were that the Labour Court after finding the workman delinquent had ordered reinstatement with 25% backwages and for issuing such an order the Labour Court had considered that there was no evidence regarding past misconduct by the employee concerned. However, on the facts of the case before us the Labour Court has categorically recorded a finding based on the past record that the delinquent-workman had also been found to have misappropriated monies on many occasions and had been awarded punishments of varying degrees.

11. In the case of Karnataka State Road Transport Corporation V/s B.S.Hullikatti (supra), it is laid down:

> "It is misplaced sympathy by the Labour Court in such cases when on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the Company. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare of the correct amount of fare."

12. As held by the Supreme Court, once misappropriation of monies which are held in trust stands proved, it is not necessary to show any sympathy towards a delinquent and that too in the case where the respondent-workman is found to be a habitual offender.

13. In view of the aforesaid facts, circumstances and evidence on record, we find that the award of the Labour Court dated 11/12/1986 cannot be upheld and this petition is required to be allowed. The impugned award at Annexure 'A' made in Reference (L.C.N.) No.971 of 1983 is quashed and set aside and it is held that the respondent-workman was correctly dismissed from service by the petitioner-corporation.

The petition is allowed. Rule is made absolute with no order as to costs.

(D.A.Mehta, J)

'Bhavesh'